IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 31714 of 2007(A)

AGAINST THE ORDER IN EP.7/2006 IN
OS.2/2004 of M.C., KATTAPPANA
.....

PETITIONER:

XAVIOUR VARKEY, S/O.VARKEY,
VILLAMTHANATHU HOUSE, THOPPIPALA P.O.,
AYYAPPANCOIL.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT:

THE FEDERAL BANK LTD.,
KANCHIYAR BRANCH, KATTAPPANA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

==========

W.P(C).No.31714 of 2007

==========

Dated this the 25th day of October, 2007.

JUDGMENT

This Writ Petition is filed to quash Ext.P4 whereby the property has been ordered to be sold in auction. The judgment debtor has obtained a decree against the writ petitioner and had moved an application for execution by sale of 1 Acre of property which belonged to the judgment debtor. The judgment debtor had filed a counter statement on 3.6.2006 whereby it is contended that the property attached is not alienable in any manner and there is restriction of transfer of title of the said property.

2. Learned counsel had referred to Rule 15(2) of The Kerala Land Assignment (Regularisation of Occupations of Forest Lands Prior to 1.1.1977) Special Rules, 1993 and submits that there is only the power for the assignee to mortgage the land to the Government, Co-operative Societies, etc. and therefore contends that it shall not be sold in auction. He also refers to Rule 15(1)

of the above Rules and submits that it shall not be alienated with respect to Sub-rule (2) of the Rules.

3. This is a matter which requires consideration and that has not been considered by the court below as per Ext.P4 order. Since it goes to the root of the case, the matter requires interference and therefore, Ext.P4 order is set aside and the matter is remitted back to the Munsiff, Kattappana for consideration of the objections raised by the judgment debtor. Since I am disposing of the matter at the admission stage itself, the court shall give notice to the decree holder, fix a date for hearing and then dispose of the matter in accordance with law. Writ Petitioner is directed to appear before the court below on 19.11.2007. The sale shall stand adjourned till a final decision is taken in the matter.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 25/10